

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks. Claims 1, 11 and 16 have been amended. Claims 21-23 have been added. Therefore, claims 1-23 are pending in the present application, of which claims 1, 11, 16 and 23 are independent.

No new matter has been introduced by way of claim amendments or additions. Entry thereof is therefore respectfully requested.

Claims 1-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by Tachikawa (U.S. Patent Number 6,636,951). The abstract of the disclosure was objected to under MPEP § 608.01(b).

**Drawings**

At the outset, the indication that the drawings filed on April 30, 2001 have been accepted is noted with appreciation.

**Specification**

The Official Action has objected to the Abstract of the Disclosure under MPEP § 608.01(b) as being too lengthy. By virtue of the amendment to the Abstract, the Abstract has been amended to be in better compliance with the provisions set forth in MPEP § 608.01(b). Accordingly, the Examiner is respectfully requested to withdraw the objection to the specification. No new matter has been introduced by way of this amendment.

*Claim Rejection Under 35 U.S.C. §102*

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1-20 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by the disclosure contained in Tachikawa. This rejection is respectfully traversed because the claimed invention as set forth in amended claims 1, 11, 16 and the claims that depend therefrom are patentably distinguishable over Tachikawa.

Tachikawa discloses a data storage system and data relocation method. The method uses a controller 11 to control the relocation of data between storage sections 171 and 172. The controller 11 monitors a load estimator 12 to determine a load condition of a computer system. If the load condition is high, or above a predetermined threshold, data relocation is halted. In addition, the controller 11 determines whether an operational state of the system meets a requirement of suspension. See Column 9 Lines 40-43. If the requirement of

suspension is met, the controller performs a termination process, suspending the relocation of data. See Column 10 Lines 5-22. Alternatively, if the load condition is low, or below a predetermined threshold, data relocation continues according to the predetermined plan. See Column 12 Lines 34-51. Clearly, Tachikawa discloses a simple on/off arrangement for relocating data whereby data is moved when the load condition is low and is not moved when the load condition is high.

Claims 1 and 16 recite “calculating a change in a rate of said moving in response to said monitored performance of the at least one application and modifying said rate of said moving in accordance with said calculated change.” Claim 11 recites “said controller is further configured to calculate a change in said rate of movement in response to said comparison of said performance and said performance goal and adjust said rate of movement in accordance with the calculated change.” Tachikawa fails to teach the calculation of a change in the rate of said moving recited in claims 1, 11 and 16. In fact, Tachikawa, as described above, uses a simple on/off arrangement for moving data from one location to another. That is, either data is being transferred during a low load condition or not transferred during a high load condition. There is no mechanism shown in Tachikawa for regulating the rate by calculating a change in rate based on the load condition. In addition, Tachikawa fails to disclose that the rate of moving the data is modified or adjusted as set forth in claims 1, 11 and 16 of the present invention.

Accordingly, Tachikawa fails to teach all of the features contained in claims 1, 11 and 16, and thus, these claims are believed to be allowable. Claims 2-10 depend upon allowable claim 1, claims 12-15 depend upon allowable claim 11 and claims 17-20 depend upon allowable claim 16 and are also allowable at least by virtue of their dependencies.

**PATENT**

Atty Docket No.: 10010559-1  
App. Ser. No.: 09/843,882

New Added Claims

Claims 21-23 have been added to further define the invention and are allowable over the cited documents of record for at least the reasons set forth hereinabove. Claims 21-23 are also allowable over the documents of record because none of the cited documents disclose the calculation of an error value or the use of the error value in a control theory equation or technique to calculate a change in the rate of movement of the data or information.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,  
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Dated: August 18, 2004

By



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